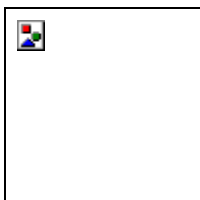


Bill To:
State of Idaho

**Send invoices to the
 address listed
 below or as indicated in the
 comments or instructions
 field**
Boise, ID 83720-0075



State of Idaho

THIS NUMBER MUST
 APPEAR
 ON ALL DOCUMENTS

Participating Addendum CHANGE ORDER - 01

Participating Addendum
PADD1017 - 01

DELIVER
TO: State of Idaho Various Agencies
 Various State Agencies
 located throughout Idaho

 Various, ID 83701

Date: Sat Jun 25, 2005

F.O.B: Destination

Terms:

VENDOR: IBM CORPORATION
 4263 COMMERCIAL ST. SE, SUITE 100
 SALEM, OR 97302
 Attn: Bryan Rock
 brock@us.ibm.com
 Phone: 208 424-3909 Office
 208-863-5525 (Cell)
 Fax: 208 424-3999

Contract From Wed Sep 01, 2004
Date

Fri Aug 31, 2007

Contract To
Date:

RFQ#: RFQ04350
DOC#: PREQ8739

Buyer: [GERRY SILVESTER](#) 208.327.7325

Item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT (line item particulars follow)	1 lot		1.00
	Total:			1.00
Blanket Comments:CONTRACT PADD1014 - AMENDMENT NUMBER ONE			
	This Contract amendment and the provisions hereof are hereby attached to and made part of that State of Idaho contract number PADD1017 dated October 22, 2004 ("Contract") for Computer Equipment, Software, Peripherals and Related Services, for VARIOUS STATE OF IDAHO AGENCIES, INSTITUTIONS, DEPARTMENTS AND ELIGIBLE POLITICAL SUBDIVISIONS, between IBM Corporation, as "Contractor" and the State of Idaho as "State." Contractor and State hereby agree as follows:			
	All of the terms and conditions contained in the Contract shall remain in full force and effect, except as expressly modified herein. The effective date of this Amendment is May 6, 2005.			
	1. Attachment B to the Contract is amended by adding the following IBM Business Partners for IBM products involving pSeries, Storage, and associated Software;			
	Virtual Enterprises, Inc., SourceOne, Inc. DBA Advanced Systems Group, Inc. Senior Account Executives			

Blake Hawkes (for IBM).....Rick Harder or Brad Jones
 225 N. 9th Street, Ste 610420 West Main Street
 Boise, ID 83702Boise, ID 83702
 801-414-3808 Cell208-381-0769 Office
 801-322-0700 Officerharder@source1inc.com
 801-322-1700 Fax208-381-0719 Fax
 bhawkes@virtual.combjones@source1inc.com
 www.virtual.comwww.source1inc.com

The following IBM Business Partner is additionally authorized for products involving the IBM iSeries.

MSI Systems Integrators
 Steve Gardner
 Director of Sales – West Region
 801-444-0649 Office
 801-971-3350 Cell
 402-965-2410 Fax
 sgardner@msinet.com
 www.msinet.com

2. State of Idaho agencies must continue to place their orders directly with IBM Corporation, although Idaho purchasers may receive quotations from any of the Attachment B IBM Business Partners who will be compensated by IBM directly for any services rendered.

3. The Contractor's primary contact as shown on Page 2 of the original PADD1017 is changed from Pete Aspinwall to read Bryan Rock, Client Representative, Phone 208-424-3909 (Office) and 208-863-5525 (Cell), Email address brock@us.ibm.com.

4. The IBM contact person for all IBM products other than Intel (PC Products) as shown on Page 3 of PADD1017 is changed from Jim Everton to read Katie Dowell, Phone 503-578-2326, email kdowell@us.ibm.com.

Item No	Description	Quantity UOM	Unit Price	EXTENSION
001	Computer Equipment, Software Peripherals and Related Services. (204-83) (nt)	1 LT	1.00	1.00
General Comments:	<p>.....NOTICE OF STATEWIDE CONTRACT (SBPO) AWARD Contract for Computer Equipment, Software, Peripherals and Related Services, pursuant to Western States Contracting Alliance (WSCA) and Minnesota Price Agreement No. A63311. The contract is for the benefit of State of Idaho Agencies, institutions, and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Master Contract on an as needed basis for a period of three years commencing September 1, 2004 and ending August 31, 2007.</p> <p>Contract Title:.....Computer Equipment, Software, Peripherals and Related Services Contract Usage Type:.....Optional Use Public Agency Clause:Yes Contract Administration:....Gregory Lindstrom ---Phone Number:.....208-327-7465 ---E-Mail:.....gregory.lindstrom@adm.idaho.gov</p> <p>Contractor's Primary Contact ---Attn:.....Bryan Rock ---Address:.....412 E. Parkcenter Blvd. Suite 205 ---City, State, Zip:.....Boise Idaho 83706 Phone Number:.....208-424-3909 (Office) and 208-863-5525 (Cell), Fax Number:.....208-424-3999 E-Mail:.....brock@us.ibm.com</p>			

CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

QUANTITIES: The State of Idaho, Division of Purchasing can only give approximations of quantities and will not be held responsible for figures given in this document.

Order Placement Address:

IBM Contact: Intel Products

---Name:.....Kevin Egan

---Phone503/ 578-2593

---e-mail.....kjegan@us.ibm.com

IBM Contact: All other products

---Name.....Katie Dowell

---Phone.....503-578-2326

---E-Mail:.....kdowell@us.ibm.com

Payment Address:

---Company Name:..... IBM Corporation

---Address:..... P.O. Box 534151

---City, State, Zip:..... Atlanta, GA 30353-4151

THIS CONTRACT, (including any files attached), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF YOUR SIGNED BID, QUOTATION, OR OFFER (including any electronic bid submission), WHICH SUBMISSION IS INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH IN FULL.

In the event of any inconsistency, unless otherwise provided herein, such inconsistency shall be resolved by giving precedence in the following order:

1. This Statewide Blanket Purchase Order document.
2. The state of Minnesota's original solicitation document.
3. The Contractor's signed bid, quotation, or offer.

INVOICES MUST BE SENT TO THE IDAHO ORDERING AGENCY.

Instructions:

Freight / Handling Included in Price

/s/ *Gerry L. Silvester*

By: **GERRY L. SILVESTER**

PARTICIPATING ADDENDUM
State of Idaho Contract Number PADD1017

WESTERN STATES CONTRACTING ALLIANCE
IBM Corporation
MASTER PRICE AGREEMENT
Minnesota Price Agreement Number A63311

1. Scope: All state governmental entities within the State of Idaho and public agencies (as defined by Idaho Code, Section 67-2327) are authorized to purchase products and services under the terms and conditions of the Minnesota price agreement. These public agencies include any city or political subdivision of the State of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the State of Idaho; and public schools and institutions of higher education. It will be the responsibility of the public agency to independently contract (i.e., issue purchase orders) with the contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts.
2. Applicable Approved Purchasing Agreement: The following provisions supplement and/or add to the Master Price Agreement.

Parties to this Participating Addendum

The parties to this Participating Addendum (PA) are IBM Corporation (IBM) (Contractor) and the State of Idaho by and through its statutory agent, the Division of Purchasing within the Department of Administration (State) on behalf of the entities identified in the paragraph titled "Scope" of this Participating Addendum (procuring agencies). Attachment B contains the IBM Business Partners authorized to sell Band 1 and Band 2 products off of this Participating Addendum.

Idaho Administration Reporting and Fees:

The contractor agrees to provide quarterly price agreement utilization reports to the Idaho administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The contractor will submit quarterly reports to the Idaho Administrator. These reports shall include the gross Idaho sales, less returns, cancellations, and replacements for the quarterly period subtotaled by procuring agency name within procuring agency state name. The report shall be accompanied with a check payable to the Treasurer, State of Idaho for an amount equal to 1.25% of the gross Idaho sales (less returns and credits) for the quarterly period. The State understands and agrees that Contractor will raise the negotiated Minnesota Price Agreement prices by this amount. This report will be provided 30 calendar days from the close of the calendar quarter.

Applicable Law:

Notwithstanding Paragraph 5 (Order of Precedence) of Minnesota Price Agreement No. A63311, Paragraph 32 (Governing Law) of Minnesota Price Agreement No. A63311 is supplemented with the following, which shall apply to this PA.

The State of Idaho's PA and all purchase orders issued thereunder by procuring agencies shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the PA are clearly inconsistent therewith, the PA shall also be governed by the applicable

provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this PA entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this PA shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this PA is held to be invalid or unenforceable by a court, the remaining terms of this PA will remain in force.

3. Lease Agreements: A lease agreement has not been approved for use for procuring agencies within the State of Idaho.

4. This PA is not for major, large hardware or hardware and software offerings. Individual units/configurations cannot exceed \$50,000.00 each. This is not a restriction on how many units/configurations that can be purchased, but on the value of each individual unit/configuration. This PA includes Bands 1 File/Print Servers, Mid-Range Servers, Band 2 Desktops, Laptops, Band 3 Printers, and Band 4 Storage Solutions per the Minnesota Price Agreement. It does not include LAN equipment and related software, General Purpose Software, or **photocopiers, facsimile machines or multifunctional** equipment designed to include any combination of copying, printing, scanning, or faxing that is functionally equivalent to equipment available to State Agencies through the State of Idaho's existing Statewide Photocopier and/or Facsimile Contracts unless such equipment costs less than \$900.00, or is inkjet-based, or color capable. Requests for exceptions must be sent to the Division of Purchasing in writing by the requesting agency.

5. Primary Contact: The primary contact and administrator of this agreement for the State of Idaho is as follows:

Mark Little, IT Purchasing Officer
Division of Purchasing
5569 Kendall Street (Zip 83706-1231)
P O Box 83720
Boise, ID 83720-0075
Ph: 208-327-7359

6. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement numbers:

A63311 (Minnesota)
PADD1017 (Idaho)

This PA and Minnesota Price Agreement together with its exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Minnesota Price Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Minnesota Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Minnesota Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS HEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of Idaho
Division of Purchasing

By: 

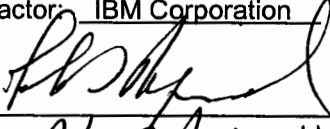
Name: Mark A. Little

Title: I.T. Purchasing Officer

DATE: 7/3/04

IBM_Participating_Addendum.doc (PADD1017)

Contractor: IBM Corporation

By: 

Name: Peter J. Aspinwall

Title: Senior Client Exec.

DATE: 9/5/04

ATTACHMENT A
PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
INTERNATIONAL BUSINESS MACHINES CORPORATION
Minnesota Price Agreement Number A63311
State of Idaho Contract Number PADD1017

1. DEFINITIONS.

As used in this Agreement.

A. "Commercial Computer Software" means Computer Software that is used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices (for example, that can be considered "shrinkwrap") or Computer Software that does not constitute Special Products and is regularly sold, licensed or leased by the Contractor to governmental entities to meet governmental requirements (for example, that can be considered "shrinkwrap").

B. "Computer" means a Data processing device capable of accepting Data, performing prescribed operations on the Data, and supplying the results of these operations; for example, a device that operates on discrete Data by performing arithmetic and logic processes on the Data, or a device that operates on analog Data by performing physical processes on the Data.

C. "Computer Data Base" means a collection of Data in a form capable of being processed and operated on a Computer.

D. "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor, or controller that is designed to cause the Computer, processor, or controller to execute an operation or operations. Computer Programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE Maintenance/Diagnostics programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs and the like. Computer Programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

E. "Computer Software" or "Software" means Computer Programs and Computer Data Bases.

F. "Computer Software Documentation" means technical Data, including Computer listings and printouts, in human-readable form that:

- (1) Documents the design or details the Computer Software;
- (2) Explains the capabilities of the Software; or
- (3) Provides operating instructions for using the Software to obtain desired results from a Computer.

G. "Data" means recorded information, regardless of form or method of recording.

H. "Hardware" includes Computers, printers, attached equipment or other equipment utilized for the State's intended purpose.

I. "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts and upgrades.

J. "Special Products" are Products that have been modified by mutual agreement to meet the State's requested changes.

K. "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates, maintenance and support services, consulting, training and other support services provided by or through Contractor.

2. OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE: It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

3. TAXES: The State of Idaho is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service. Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any corporate taxes incurred as a result of doing business with the State of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Contract becomes effective, the State of Idaho will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State of Idaho be responsible for personal property taxes affecting items subject to this Contract at the time it becomes effective, unless otherwise agreed.

4. ORDER NUMBERS: Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

5. CONTRACTOR RESPONSIBILITY: The Contractor shall be required to assume responsibility for delivery of all Products and Services offered in the WSCA Agreement, whether or not the Contractor is the manufacturer or producer of such Products or Services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

6. STATE OF IDAHO MINIMUM WAGE LAW: It will be the responsibility of the Contractor to fully comply with the State of

- Idaho code regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.
7. **SHIPPING, DELIVERY, INSTALLATION AND ACCEPTANCE:** All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination", unless otherwise specified in the Agreement, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point, unless a different location is agreed upon in writing by the parties. The Contractor shall deliver all orders as specified and complete installation, if required, within the number of days after receipt of order (A.R.O.) offered, unless otherwise agreed by the parties. Time for delivery commences at the time the order is received by the Contractor. When the purchase price does not include delivery, acceptance shall occur fourteen (14) days after delivery, unless the State has notified the Contractor in writing that the order does not meet the State's bidding document requirements or otherwise fails to pass the Contractor's established test procedures or programs. When installation is included, acceptance shall occur upon completion of installation. If an order is for support or other services, acceptance shall occur fourteen (14) days after completion, unless the State has notified the Contractor in writing that the order does not materially meet the contractual commitments or otherwise fails to pass the Contractor's established test procedures or programs.
 8. **RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement. If installation is requested by the State or specified in the State's contract with Contractor, pricing shall include all charges associated with a complete installation at the location specified.
 9. **INVOICING:** ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. Agreement number and/or purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.
 10. **PROHIBITED CONTRACTS:** No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. Idaho Code Section 67-5726(1).
 11. **PAYMENT PROCESSING:** Idaho Code Section 67-5735 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."
 12. IBM products comply with all required and applicable laws and regulations governing their manufacture and sale.
 13. **PATENTS AND COPYRIGHT INDEMNITY**
 - a) Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for IBM Products (hereinafter the "items") purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
 - b) Contractor shall have no liability to the State under any provision of this clause with respect to: any claim of infringement that is based upon (i) the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications (including items the State provides for incorporation into an IBM product); (ii) the modification by the State of the item(s); or (iii) the use of the item(s) not in accordance with Contractor's previously established specifications (iv) infringement by a non-IBM product alone, as opposed to its combination with products Contractor provides as a system.
 - c) Should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the State a full refund for the net book value of the item(s) and accept its return.
 14. **CONFIDENTIAL INFORMATION:** Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other personal taxpayer information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its Services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement or Contractor may deliver to the State a certificate confirming destruction of such Confidential Information. The confidentiality obligation contained in this section shall survive termination of this Agreement but shall end upon Contractor's return of such

Information or Contractor's certification of destruction.

"Confidential Information" shall not include data or information that:

- a) Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b) Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c) Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State

Nothing in this Section prevents Contractor or the State from disclosing or making use of information-technology related know-how acquired, principles learned or experience gained during the execution of this Agreement.

15. **USE OF THE STATE OF IDAHO NAME:** Contractor agrees that it will not, prior to, in the course of performance of this Agreement (or any order), or thereafter use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.
16. **APPROPRIATION BY LEGISLATURE REQUIRED:** It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.
17. **SPECIAL TERMS GOVERN:** In the event of a conflict between the terms in this Attachment A and the Master Price Agreement, the terms in Attachment A will prevail.
18. **FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Administrator, Division of Purchasing promptly in writing of any cause for delay and the Administrator, Division of Purchasing concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

19. **GOVERNING LAW AND SEVERABILITY:** This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this Agreement shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.
20. **SAVE HARMLESS.** Subject to the limits set forth in Sections 25.B(6) and 25.C of this Agreement, the Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Contractor and its Subcontractors under this Agreement and that cause death or bodily injury or damage to real and tangible personal property, provided that the State promptly notifies Contractor in writing or any claim or expected claim hereunder and cooperates with Contractor in any defense and settlement negotiations. State and Contractor agree that Contractor shall control the defense of any claim hereunder.

21. SOFTWARE LICENSE.

In this section on Software Licenses, the term "Use" means storing, loading, installing, executing or displaying Software on a Computer, processor, or controller, or making a copy of Software for archival or backup purposes only.

A. Contractor grants State a personal, non-transferable and non-exclusive right to use, in object code form, all IBM Software (hereinafter the "Software") and related documentation furnished to State under this Agreement. This grant shall be limited to use with the Hardware or Products for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by Contractor.

B. State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set out in this Agreement. State also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Software.

C. State is permitted to make a single archive copy of Software. Any copy must contain the same copyright notice and proprietary markings that are on the original Software.

D. Use of Software on any Products other than that for which it was obtained, removal of Software from the United States, or any other material breach shall automatically terminate this license.

E. The terms and conditions of a standard software license agreement applicable to Software that is Commercial Computer Software acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or

Attachment A

WSCA Participating Addendum to Minnesota Price Agreement Number A63311
State of Idaho Contract Number PADD1017

(09/01/04)

conditions of this Agreement as described in this Section. In the event of any conflict between the terms or conditions of this Agreement and the Contractor's standard software license agreement, the terms or conditions of the license shall take priority and control, provided, however, without limitation, that the provisions of this Agreement relating to choice of law found at Section 19, the remedy for copyright infringement found at Section 13, and the Exclusive Remedies and Limitation of Liability at Section 25 herein shall apply in all cases and supersede any provisions contained in Contractor's software licensing agreement or any other agreement.

F. State's license includes the right to updates, upgrades, or other enhancements. The Contractor reserves the right to an additional license fee for such update, upgrades, or other enhancements.

G. Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Contractor or subsequently upgraded by Contractor.

H. State's license infers no title or ownership in the Software and no rights in any associated source code, unless otherwise agreed to in writing by the parties, and will not be construed as a sale of any ownership rights in Software, unless such Software is being developed or modified exclusively as a Special Product in response to the State's bidding documents, in which case a separate contract is required.

State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

22. USE OF SOFTWARE AND INFORMATION.

A. State agrees that any Software or technical and business information ("Information") owned by Contractor or its suppliers and furnished to State under this Agreement shall remain the property of Contractor or the supplier.

B. All Software and information furnished to State under this Agreement:

(1) shall be used by State only to install, operate or maintain the Product for which they were originally furnished;

(2) shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this Agreement; and

(3) shall, together with any copies except one (1) copy for archival purposes containing State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

C. All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except for any part that:

(1) is rightfully obtained by State free of any obligation to keep in confidence;

(2) becomes generally known to the public through acts not attributable to State;

(3) is independently developed by State, or

(4) is subject to disclosure in accordance with the provisions of the Idaho Public Records Act.

D. (1) Within the United States, a Software or program license may be transferred to another location within the State's organization upon written notice to Contractor without additional costs. All other transfers, including a Software or program license outside the United States, shall be permitted only with Contractor's prior written consent which consent shall not be unreasonably

withheld and shall be subject to Contractor's standard transfer fee in effect at the time of the transfer.

(2) The rights granted herein are restricted for use solely by State. State may not authorize or allow the use or marketing of the Software/Programs by a third party, and may not assign or transfer the Software or programs to a third party, without the prior written consent of Contractor. The new end user must agree in writing to Contractor's terms and conditions respecting ownership, use and confidentiality of Software and information and to payment of any scheduled fees.

23. WARRANTIES.

A. Product warranties shall include the following at a minimum:

(1) On the delivery date the IBM Products and the IBM associated computer operating system Software (basic Software acquired with the equipment that enables equipment to function) will be in good working order and in accordance with Contractor's standard specifications. The warranty for other suppliers' Commercial Computer Software is included in the supplier's software package and is provided directly from the supplier. Contractor will work with the State to determine whether a problem encountered during the warranty term is caused by the Contractor's own Products or by a third party's Commercial Computer Software or other Product. If a problem is caused by a third party Product delivered hereunder, Contractor will direct the State to the appropriate third party contact with an accurate description of the problem.

(2) The warranty period shall be as specified in WSCA Agreement and shall begin on the day following successful installation. If no warranty period is specified, the warranty period shall be Contractor's standard warranty period for the Products ordered, commencing at delivery.

(3) State shall notify Contractor if any Product is not in good working order during the warranty period. Contractor will, at its option, either repair or replace any Product not in good working order without charge to State. Repair or replacement Products will be new or equivalent to new in performance and fully warranted the same as new, for the remaining warranty period of the original Product. All returned Products will become the property of Contractor at the time the Product is picked up by Contractor or placed in shipment to Contractor.

(4) The service provided during the warranty period is dependent upon the applicable warranty option selected by State and indicated in an attachment to this Agreement or the WSCA Agreement. If no warranty option is indicated, Contractor will provide the warranty service that is Contractor's standard for such Product, unless otherwise agreed to by the parties.

(5) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates agreed to in such writing.

B. Software warranties shall include the following at a minimum:

(1) Contractor warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date unless otherwise agreed to in writing by the parties. Contractor will replace without charge any Contractor supplied tapes, diskettes or other media that is not in good working order, during the warranty period, if returned to Contractor. If Contractor is unable to replace the Software, Contractor will refund the full amount paid for the use of the Contractor Software as the sole remedy.

(2) In addition to the warranty exclusions stated in Section 24, Contractor does not warrant that the operation of Products acquired under this Agreement will be uninterrupted or error free, or that the Software functions will meet State's requirements. Although Contractor has used reasonable efforts to minimize defects or errors in the Software, State assumes the risk of any damage or loss from the use of or inability to use the Software.

C. Contractor warrants that its Support and customer service and assistance will be performed in accordance with reasonable care and skill using standards generally accepted in the industry for a reasonable workman. Warranty support for Software is provided by Contractor for as long as Contractor's Software is supported by Software Services, which is always at least 90 days after the Software is made generally available.

24. WARRANTY EXCLUSIONS.

A. EXCEPT AS STATED IN SECTION 23, CONTRACTOR, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUB-CONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Warranty for third party products, if any, is provided by the original manufacturer.

B. The warranty provided in Section 23 does not cover repair for damages, malfunctions or service failures caused by:

- (1) actions of non-Contractor personnel;
- (2) failure to follow Contractor's installation, operation or maintenance instructions previously provided to State;
- (3) attachment to the Products of non-Contractor products or failure of products not maintained by Contractor unless such installation or use is approved in writing by the Contractor; or
- (4) Force Majeure conditions set forth in Section 18.

25. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY.

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 25, "CONTRACTOR" SHALL BE DEEMED TO INCLUDE THE CONTRACTOR AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND SUPPLIERS AND "DAMAGES" SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS, LIABILITY, EXPENSE OR COST INCURRED.

B. CONTRACTOR'S ENTIRE LIABILITY AND STATE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

(1) FOR INFRINGEMENT, THE REMEDIES SET FORTH IN the Patent and Copyright Indemnity clause of Part B, below.

(2) FOR FAILURE OF PURCHASED OR LEASED PRODUCTS, THE REMEDIES STATED IN SECTION 23 HEREIN. IF CONTRACTOR IS UNABLE, DESPITE REASONABLE EFFORTS, TO REPAIR OR REPLACE, STATE SHALL HAVE THE RIGHT DURING THE WARRANTY PERIOD TO RETURN THE PRODUCTS FOR A REFUND OF THE PURCHASE PRICE.

(3) FOR FAILURE OF SOFTWARE, THE REMEDY STATED IN SECTION 23 HEREIN.

(4) FOR DELAYS IN THE DELIVERY OR SUCCESSFUL PRODUCT INSTALLATION, WHICHEVER IS APPLICABLE, CONTRACTOR SHALL HAVE NO LIABILITY UNLESS THE DELIVERY OR SUCCESSFUL INSTALLATION DATE IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO STATE OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE STATE SHALL HAVE THE RIGHT, AS ITS REMEDIES:

(a) TO RECOVER DIRECT COSTS INCLUDING REPLACEMENT PRODUCTS, IF ANY,

ATTRIBUTABLE TO CONTRACTOR'S DELAY, SPECIFICALLY EXCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUBJECT TO SECTION 25(B)(6), BELOW; AND

(b) TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES.

(5) FOR PROVEN DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, EXCLUDING THE STATE'S OTHER SOFTWARE, DATA, AND DATA FILES, OR FOR BODILY INJURY OR DEATH (which may include lost earnings for such bodily injury or death) TO ANY PERSON NEGLIGENTLY CAUSED BY CONTRACTOR.

(6) FOR ACTUAL, DIRECT DAMAGES FOR DEFAULT ON CONTRACTOR'S PART (regardless for the basis of the claim), OTHER THAN AS SPECIFICALLY SET FORTH IN 25.B(1) THROUGH 25.B(5), CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES, NOT TO EXCEED TWO (2) TIMES THE PURCHASE AMOUNT FOR THE PRODUCT OR SERVICE AT ISSUE OR \$100,000, WHICHEVER IS GREATER.

C. EXCEPT TO THE EXTENT PROVIDED SPECIFICALLY IN SUBSECTION 25.B(5) ABOVE CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

26. SUPPORT.

A. Except as specifically provided, an order for Support will constitute State's acceptance of the terms of the exhibit for that Support in effect on the date of order. The terms and conditions of a standard support services program agreement (for example, a gold, silver or bronze or similar program) applicable to Products and acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement, as described below. In the event of any conflict between the terms or conditions of this Agreement and a standard agreement, the terms or conditions of the standard agreement for Support shall take priority and control, provided, however, and without limitation, that the provisions of this Agreement relating to choice of law found at Section 19 of the State's Standard Contract Terms and Conditions, and the Exclusive Remedies and Limitation of Liability at Section 25 herein shall apply in all cases and supersede any provisions contained in a standard services agreement or any other agreement.

B. To be eligible for Support, Products must be in good operating condition and at current specified revision levels. Contractor will charge Contractor's standard rates in effect on the date of the Support order to bring non-eligible Products up to these requirements.

C. Contractor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.

D. Relocation of Products is State's responsibility and may result in additional Support charges and modified service response times. Products moved to another county may continue to be serviced subject to availability of a Contractor authorized Support provider.

E. Contractor is not required to provide Support for nonqualified products. "Nonqualified products" are hardware and Software not supplied or approved by Contractor, and Products for which the State does not allow Contractor to incorporate modifications. The State is responsible for removing nonqualified products to allow Contractor to perform Support services.

F. Support does not cover any damage or failure caused by:

(1) media and supplies or use of items not designated for use with Products; or

(2) site conditions that do not conform to Contractor's previously established site specifications; or

(3) neglect, improper use, fire or water damage, electrical disturbances, transportation by State, work or modification by people other than Contractor's employees, subcontractors, or other authorized parties.

G. The State is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the Products to reconstruct lost or altered files, data or programs. State must have a representative present when Contractor provides Support services. State must notify Contractor if Products are being used in an environment that poses a potential health hazard to Contractor's employees or subcontractors.

H. For any Services which result in a deliverable (which is a work of authorship created hereunder such as a training manual), such deliverable will be either a Type I or Type II Material as defined below. If not specified, such Materials will be Type II Materials:

Type I Materials are those, created during the Service performance period, in which the State will have all right, title, and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The State grants Contractor: 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the State. Contractor grants the State an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the State only, copies of Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Section.

The parties understand and agree that any IBM pre-existing or independently-developed materials remain the property of IBM regardless of whether they are incorporated in a Material or otherwise provided hereunder. In addition, any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either of us, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

27. MACHINES

A. Licensed Internal Code

Certain Machines we specify (called "Specific Machines") use Licensed Internal Code (called "Code"). International Business Machines Corporation or one of its subsidiaries ("IBM" or "we") owns copyrights in Code or has the right to license Code. IBM or a third party owns all copies of Code, including all copies made from them.

We will identify each Specific Machine in a Transaction Document. If the State ("State" or "you") are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction

with, only the Specific Machine, designated by serial number, for which the Code is provided. We license the Code to only one rightful possessor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the Code (unless we make one available for your use), provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and
3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) destroy all your copies of the Code that were not provided by us, 2) either give the other party all your IBM-provided copies of the Code or destroy them, and 3) notify the other party of these terms. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

4. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;
5. reverse assemble, reverse compile, or otherwise translate the Code unless expressly permitted by applicable law without the possibility of contractual waiver;
6. sublicense or assign the license for the Code; or
7. lease the Code or any copy of it.

B. Machine Code

For certain Machines we may provide basic input/output system code, utilities, diagnostics, device drivers, or microcode (collectively called "Machine Code"). This Machine Code is licensed under the terms of the agreement provided with it.

C. Engineering Changes

The State agrees to allow Contractor to install mandatory engineering changes (such as those required for safety) on an IBM machine.

**ATTACHMENT B
PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
INTERNATIONAL BUSINESS MACHINES CORPORATION
Minnesota Price Agreement Number A63311
State of Idaho Contract Number PADD1017**

Business Partners: Intel Products (Bands 1 File/Print Servers, Mid-Range Servers and Band 2 Desktops, Laptops) Only

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